

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 24, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 93-1044

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**MONICA CRISTINA PARIGI DANIEL,
an Incompetent, by Robert Daniel,
her Guardian, and
ROBERT DANIEL,**

Plaintiffs-Appellants-Cross Respondents,

v.

**WISCONSIN PATIENTS COMPENSATION FUND,
MERITER HOSPITAL, INC.,**

Defendants-Respondents-Cross Appellants,

DR. CHARLES J. HODULIK,

Defendant.

APPEAL from a judgment of the circuit court for Dane County:
ROBERT DECHAMBEAU, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Dykman, J.

PER CURIAM. Monica Cristina Parigi Daniel and Robert Daniel, who is Monica's guardian, appeal from a judgment dismissing their medical malpractice complaint after a jury trial. We affirm.

Monica suffered brain injuries from an attempted suicide while an inpatient at Meriter Hospital. Monica and Robert are married. Their complaint went to trial against Meriter and Dr. Charles Hodulik, her treating psychiatrist. The jury found that Hodulik was not negligent but Meriter was. However, the jury also found that Meriter's negligence was not causal.

The Daniels argue that the jury instructions did not properly instruct the jury regarding the respective duties of the plaintiffs and defendants. Meriter argues that the Daniels waived the argument by failing to object at the instruction conference. *See* § 805.13(3), STATS. The Daniels respond that they raised the issues in their post-trial motion. This is irrelevant, however, since § 805.13(3) requires that they object before the instructions are given. The court of appeals lacks the power to review unobjected-to instructions. *State v. Schumacher*, 144 Wis.2d 388, 409, 424 N.W.2d 672, 680 (1988).

The Daniels argue that the jury erroneously found that Meriter's negligence was not causal. Specifically, they argue that if the jury found Meriter negligent by failing to monitor Monica, the jury's finding of no causation was contrary to the evidence. The Daniels also concede, however, that the jury may have found that Meriter was negligent in some other way. If so, they argue, such a finding was caused by the alleged errors in the instructions and evidentiary rulings. As we understand the Daniels' arguments, they concede that the jury might properly have found Meriter's negligence not causal using the instructions it was given. We have held that those instructions cannot be challenged in this appeal. We turn to the evidentiary issue.

The Daniels argue that the trial court erred by not allowing them to introduce Meriter's internal policies relating to care of patients with self-destructive tendencies. As we read the argument, however, the Daniels sought to use this evidence on the issue of negligence. The jury found in the Daniels' favor on negligence. Any evidentiary error was harmless.

The Daniels argue that the burden of proof regarding causation should have been placed on the defendants, that is, that the defendants should have to prove that their negligence did *not* cause Monica's injuries. This issue, too, was waived because there was no such objection to the instructions as given by the court.

The Daniels argue that we should order a new trial under § 752.35, STATS., because the real controversy was not fully tried. We decline to do so. The argument is first made in their reply brief. Appellants may not raise new issues in their reply brief. *In re Estate of Bilsie*, 100 Wis.2d 342, 346 n.2, 302 N.W.2d 508, 512 (1981).

The issues raised in Meriter's cross-appeal are mooted by our rejection of appellants' arguments.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.